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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,911	07/14/2003	David Bailey	4284	7965
	7590 08/11/2004		EXAMINER	
Harris Zimmerman Law offices of Harris Zimmerman Suite 710 1330 Broadway Oaklan, CA 94612-2506			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 08/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,911

Applicant(s)

BAILEY, DAVID

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 and 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the phrase “one of said front or rear walls” is incomplete and indefinite. In claim 9, the phrases “the sheet portion” and “the other sheet portion” lack proper antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (6,675,966) in view of Shteynberg (5,191,973). Ray discloses a paint brush cover (160) for protecting the bristles of a paint brush formed from a generally form-retaining material with an air-permeable screen mesh portion (62) comprising a front wall (32), a rear wall (20), a bottom between the front and rear walls, opposed edges (48), a top (172) having an opening (182), an extension (174) and means for releasably securing (58, 190, 192, 194) the walls, bottom, opposed edges and top in a closed relationship. The screen mesh portion of the cover of Ray is considered equivalent to a generally liquid-resistant material as claimed. To the extent that Ray

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fails to show the cover being formed from a generally liquid-resistant material, Shteynberg shows a paint brush cover having air breathing apertures (14, 34) and formed from a plastic material which is considered equivalent to a generally liquid-resistant material. It would have been obvious to one having ordinary skill in the art in view of Shteynberg to modify the cover of Ray so it is formed from a generally liquid-resistant material for better protecting the paint brush and also extend the life of the cover. The means for releasably securing cover of Ray is considered as art recognized equivalent method as claimed and inasmuch as a number of different ones appear to be suitable and inasmuch as applicant's specification does not state that using these specific features as claimed solves any particular problem or yields any unexpected results.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Gask (3,800,998). The cover of Ray fails to show one of the front and rear walls being provided with an aperture so the cover may be suspended. Gask shows a paint brush cover (10) having an aperture (21, 22) for suspending the cover on a peg rack. It would have been obvious to one having ordinary skill in the art in view of Gask to modify the cover of Ray so one of the front and rear walls includes an aperture to facilitate suspending the cover on a peg rack.

6. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above, and further in view of Ringler (2,290,359). The cover of Ray fails to show the releasable securing means comprises an opening in the extension

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and a tab portion in the front wall. Ringler teaches a paint brush cover comprising a releasable securing means including an opening (26) and a tab portion (24). It would have been obvious to one having ordinary skill in the art in view of Ringler to modify the cover of Ray so the releasable securing means comprising an opening in the extension and a tab portion in the front wall because such securing means is considered as art recognized equivalent method.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 872-9301. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
August 6, 2004



Luan K. Bui
Primary Examiner